HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b)

Description of case

W.P. No. 983 of year 2003 (M/S)

Pranveer Karanti Yashodas S/o Sri Ram Dass

Versus

State of Uttaranchal through the Secretary

Uttaranchal Education & Examination Board

and another

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date of decision 01.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.983 of 2003(MS)

Pranveer Karanti Yashodas s/o Sri Ram Dass
R/o G-3, Judges Colony, Roshanabad, Hardwar

…… Petitioner

Versus

1. State of Uttaranchal through the Secretary
   Uttaranchal Education & Examination Board
2. Principal, G.I.C. Bageshwar ……. Respondents

Ms. Jyotsna, Advocate for the petitioner
Sri N.C. Gupta, Standing counsel for the respondents.

Dated: October 1, 2003

Hon'ble Rajesh Tandon J:

The present writ petition has been filed for a writ, order or direction in the nature of mandamus commanding the respondents for revaluation of answer books of the petitioner's Intermediate Examination 2003.

The petitioner alleged that he appeared in Intermediate Examination in the year 2003, from Government Inter College Sukhdhang, Champawat. on 30.6.2003 result of High School Examination was declared by the respondents which was published in the news paper on 1.7.2003. The petitioner was shocked to see that he had been given only 61 marks in physics, 67 marks in Chemistry, 36 marks in math, 60 marks in Hindi and 50 marks in English. The petitioner is a brilliant student from very beginning and has passed his High School examination with 65% marks in first division.

Heard the learned counsel for the parties.

So far as the revaluation of answer book is concerned the same is not permissible in view of the various authorities of the Apex Court and High Courts. The Apex Court in Bhushan Uttam Khare vs. Dean B.J. Medical College, 1992 (2) SCC 220: AIR 1992 SC 917, has held as under:

"In deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matter falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice."

The Apex Court in Arun Desai vs. High Court of Bombay through Chief Justice, reported in 1984 (Supp) SCC 372, has held as under:

"Students who fail in their examinations are generally prone to make allegations that the assessment of their answer scripts is defective, arbitrary or partial to explain their failure and to console themselves with the thought that not they but the examiners are to be blamed for that."

The Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kumarasheth AIR 1984 SC 1543 has held that evaluation of answer book does not attract the principle of nature justice. The observations of the Apex Court are as under:

"A process of evaluation of answer papers or of subsequent verification of marks does not attract the principles of natural justice since no decision making process which brings about adverse evil consequences to the examines is involved. The principle of natural

justice cannot be extended beyond reasonable and relational limits and cannot be carried to such absurd length as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made of the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. It was further held in this decision that it is in the public interest that the result of public examination when published should have some finality attached to them. If inspection and verification in the presence of the candidates and revaluation are to be allowed as of right it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. It was further held in the instant case that the Court should be reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matter sin preference to those formulated by professional men possession technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

Relying upon the aforesaid observations made by the Apex Court it has been held by the Allahabad High Court in a case Subhash Chand and others vs. State of U.P. and others (2001)2 UPLBEC 1085 as under:

"The question is whether in absence of any statutory rule this Court can direct rechecking or revaluation of the answer books of the petitioner. The petitioners appeared in B.T.C. entrance examination 1998-99 and were declared unsuccessful. Answer books could be

revealed or rechecked if the rules provide for its. In absence of any statutory rule the answer books cannot be rechecked or revalued by the respondents nor such a relief can be granted by this Court. The petitioners may be good students but that cannot entitled them to make self assessment and claim that they should have been awarded 90% marks. If self assessment is adopted as the basis of revaluating answer books in an examination and this Court is asked to interfere on this ground then the entire system of competitive examination shall come to a standstill and this Court shall stand converted into an evaluating body of answer books."

It has further been held by the Allahabad High Court in the case Mobeen Ahmad Ansari vs. State of U.P. and others (1999) 1 UPLBEC 603 as under:

"It is a matter of great concern that in the recent years there is consideration influx of such writ petitions in this Court has increased. Earlier the Board of High School and Intermediate Education had inspired so much confidence that seldom writ-petition were filed. Filing of writ petition on such a large scale before this Court indicate that there is considerable dissatisfaction among the students and their parent which requires introspection by the Board of authorities as well Although this Court seldom interfere in the revaluation of the marks, but with a view to have greater accountability and transparency there is a need for framing some certain rules to rectify the error, mistakes or defection calculation of the marks."

Coming to the merits of controversy Rule 21Chapter XII of U.P. Education Code, provides as under:

21. उन परीक्षार्थियो की उत्तर पुस्तिकायें जो मुख्य परीक्षा में केवल एक विषय उस विषय के लिए निर्धारित 5 प्रतिशत अंको से अधिक उर्त्तीण नही है बिना शुल्क अथवा आवेदन पत्र के संनिरीक्षित की जायेगी । अन्य परीक्षार्थी जो अपनी

उत्तर पुस्तकें संनिरीक्षित कराना चाहते हैं निम्नलिखित नियमें के अनुसार करा सकते हैं।

क. कोई परीक्षार्थी जो परिषद द्वारा संचालित परीक्षा में प्रविष्ट हुआ है विषयों के अपने अंको की संनिरीक्षा द्वारा पुनः जॉच कराने के लिए आवेदन पत्र दे सकता है।

ख. ऐसे समस्त आवेदन पत्रों के साथ कोष चालान की एक प्रतिलिपि यह दिखाते हुए 20 रूपये प्रति विषय की दर से निर्धारित शुल्क दे दिया गया है, अवश्य होनी चाहिए। उत्तर प्रदेश से बाहर के सीन से आवेदन पत्र भेजने वाले परीक्षार्थियों के सम्बन्ध में यह शुल्क सचिव के कार्यालय में प्रेषित पोस्टल आर्डर अथवा स्टेट बैंक आफ इंडिया की इलाहाबाद शाखा पर रेखित बैंक डाफट द्वारा भेजा जाना चाहिए
।

ग. ऐसे समस्त आवेदन पत्र परीक्षाफल की तिथि से तीस दिनों की अवधि के अन्दर अवश्य दिये जाने चाहिए।

The aforesaid rule (Ka) contains the provisions regarding scrutiny पुनःजॉच of the answer books. The provision is self explanatory and the Board has power to scrutinise the answer books in accordance with Rule (ka) of Rule 21. The rule gives ample power to the Board to help and assist the students who are desirous of getting their answer books scrutinised.

There lies a deference between scrutiny and revaluation. The provisions as referred above contains the provision of संनिरीक्षा which can be termed as scrutiny of answer books and it may also be called as पुनःजॉच whereas revaluation has been defined in the Legal Glossary as. पुर्नमूल्यॉकन . Thus it is clear that only scrutiny पुनःजॉच of answer books is available to a student and there is no provision of valuing the answer books again.

As rightly pointed out in 1999(1) U.P.L.B.C. 603 that in the recent years there is a increase of such writ petitions. Thus in order to

have accountability and transparency there is a need for framing rules to rectify the error as mistake in calculation of marks. Even in this session, answer books were directed to be scrutinised before the Registrar General of the Court in pursuance of my order dated 17.9.2003. In various answer books calculation mistakes have been found which losses confidence of general student. The education is being treated as a part of Article 21 of the Constitution of India. Uttaranchal Education and Examination Board is therefore, accountable for the mistakes committed by its officers. The authorities of the Board are, therefore, bound to perform their duties as has been rightly stated in Bhagwat Geeta Chapter 18- (48) to the following effect:

सहज कर्म कौन्तेय सदोषमति न त्यजेत।
सर्वारम्भा हि दोषेण धूमोनग्रिदिवावृता।।

"Therefore, Arjuna, one should not abandon one's innate duty, even though it may be tainted with blemish; for even as fire is enveloped in smoke, all undertakings are clouded with demerit."

As rightly said by Swami Vivekanand in the following words:

A man must not be judged by the nature of his duties but the manner in which he does them.

Looking to the aforesaid facts and circumstances the Secretary Uttaranchal Education and Examination Board, shall personally look into the matter and shall appoint a Committee in this regard amongst his officials which may be called as Moderators.

In view of the aforesaid facts and circumstances liberty is given to the petitioner to apply for scrutiny of his answer books according to Regulation 21 of Chapter XII of Education Manual Act. If such an application is filed, the respondents are directed to dispose of the same

within a period of three weeks from the date of filing of the certified copy of the order.

Subject to the aforesaid observations the writ petition is disposed of.

(Rajesh Tandon, J.)

1.10.2003
Dhyani